PAY EQUITY HEARINGS TRIBUNAL

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PEHT BUSINESS PLAN 2015 - 2018

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PAY EQUITY HEARINGS TRIBUNAL
BUSINESS PLAN 2015-2016

Mandate and Statutory Authority

Under the Pay Equity Act, the Pay Equity Hearings Tribunal is empowered to hear and decide pay equity disputes. Its decisions are final and conclusive for all purposes, and the Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it.

The Tribunal's effective delivery of adjudicative services regarding pay equity matters supports fair and harmonious workplaces, enabling employers to attract and retain workers, contributing to a business environment that attracts jobs and investment to Ontario's economy.The purpose of the Pay Equity Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes. This goal can best be achieved through the co-operation of employers, bargaining agents and employees. The Tribunal is committed to encouraging settlement between the parties.

Overview of Agency Programs & Key Activities:

The Tribunal has two key activities:

- Adjudication
- Mediation

Adjudication

The Tribunal is tripartite in nature, comprised of neutral presiding officers and member representatives of employers and employees/trade unions. The members are expected to bring the perspective and concerns of their community to the task of adjudication. All of the presiding officers have cross-appointments with the Ontario Labour Relations Board ("the Board"). The Tribunal holds hearings where evidence is presented and oral arguments are made. Pay equity issues are often complex; hearings can take multiple days to complete. Tribunal decisions are issued in writing and posted on accessible websites (www.canlii.org). Parties are encouraged to seek independent legal advice before coming to the Tribunal.

Mediation

Almost every case is scheduled for a pre-hearing consultation before a presiding officer, other than the one who will hear the case. The goal of the pre-hearing is to identify and narrow the issues in dispute, organize the litigation to ensure that it is ready for hearing, and look for opportunities to settle some or all of the issues. Pre-hearings are more informal than a hearing and provide an opportunity for parties to ask questions about the Tribunal's hearing procedures. Pre-hearings reduce hearing time, saving both parties and the

Tribunal time and expense. Parties are increasingly encouraged to identify any preliminary issues well in advance of a hearing so that they may, where applicable, be decided on written submissions.

Outside of the pre-hearing process contemplated by the Act, the Tribunal panel assigned to hear a case, with the consent of the parties, sometimes engages in a form of mediation/adjudication. The Members have been involved in mediating settlements in cases that would otherwise have consumed a significant number of hearing days. Hopefully, their success may encourage other parties to pursue this form of alternative dispute resolution.

Administration

The Tribunal receives administrative and other support from the Ontario Labour Relations Board. The Board provides a range of services including case processing, scheduling, budgeting, human resource functions, information and information technology services, library and research, and legal services. The benefits of the Board providing these services include an efficient use of resources, consistency of process and outcome and the ability to maintain and monitor quality control practices. These objectives are accomplished while at the same time safeguarding the particular and unique expertise of the Tribunal.

Environmental Scan

External Scan:

- The Tribunal expects to continue to receive a caseload that is largely focused on unionized broader public sector employers. The presiding officers, all of whom are cross-appointed to the OLRB, possess expertise in collective bargaining, broader public sector restructuring, and labour relations generally, which makes them well-qualified to hear these disputes.The Tribunal has recently concluded its hearing into two applications that raise the issue as to whether an employer that developed its Pay Equity Plan using the proxy comparison method has a statutory duty to maintain pay equity. The decision will be released shortly. The stakes are such that, regardless of how the matter is decided, there is a significant likelihood of further litigation (ie. judicial review). There appears to be an increased number of cases which involve disputes arising out of the negotiation of amended pay equity plans where workplace circumstances have changed since the original plan was posted. Given some of those original pay equity plans were posted more than twenty years ago, there exists a significant potential for more disputes of this nature to be raised with the Tribunal.

Internal Scan:

- Given the relatively small number of cases heard by the Tribunal each year the Tribunal has completed its move to appoint and use its Members on a part-time basis. - As long as the Tribunal could cross-appoint full-time members from the Ontario Labour Relations Board, recruiting part-time members was not a problem

Strategic Plan Implementation and Risk Assessment

The Tribunal will hear and decide cases through an accessible and fair hearing process, timely scheduling of hearings, and timely and thoughtful decisions based on the evidence presented and submissions made to it by the parties as well as its interpretation of the relevant legislation and jurisprudence. .

The Tribunal will continue to employ a case management strategy that utilizes its adjudicative and mediation resources to resolve the issues between the parties. Where cases do not settle, the Tribunal will work on finding ways to streamline any hearing that has to take place through case management tools: agreed statement of facts, witness "will say" statements, etc. The Tribunal will continue to address the issue of delay and frequent extensions of time and adjournments by attempting to discourage adjournments except where compelling circumstances arise. In addition, adjournments sine die were reduced to periods of nine months rather than twelve.

The Act prescribes that a three person panel constitutes a quorum of the Tribunal. There are two part time members representative of employers and three part time members representative of employees. The Tribunal's ability to constitute a quorum, either at all, or in a timely fashion, is seriously impacted by the illness or other unavailability of a member, or where a member has a conflict of interest. When hearing the merits of a case, the *Statutory Powers Procedure Act* permits one person to constitute a quorum of the Tribunal, conditional upon consent of the parties.

There is some risk associated with the Tribunal's reliance on part-time members. Pay equity is a very complicated and specialized area. The low per diem rate payable to Tribunal part-time members ($398 per hearing day versus the per diem rate of $664 payable to OLRB members) and the low case load makes it very difficult to attract part-time members to the Tribunal.

There is some risk associated with the possibility that a party will seek to participate in a hearing in French. Consecutive oral interpretation doubles the hearing time, and normal hearing costs, even without factoring in the interpreter and translation fees. Given the length of Tribunal hearings, the additional costs could be significant and a pressure on the Tribunal's financial resources.

The number of applications filed with the Tribunal may not be an accurate predictor of hearing resources required. Due to the small sample size and the considerable variation in hearing time required to dispose of matters, it is almost meaningless to speak of an "average length of hearing". The statistics relating to the number of hearing or pre-hearing conference dates scheduled and held and number of written decisions issued is a more accurate reflection of the Tribunal's work. However, there is still considerable variation in the the complexity of the decisions and the amount of time required to generate decisions.

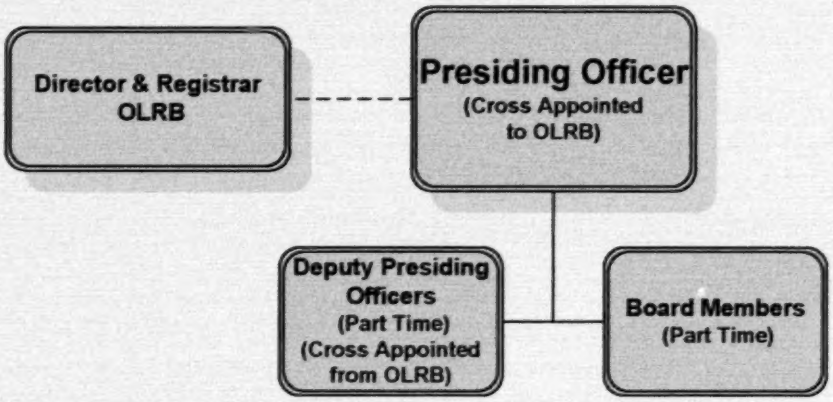
Key Activities with Stakeholders

The Tribunal will communicate with its community of client/ stakeholder groups by regular outreach sessions and applicable conferences and seminars.

Human Resources – Organization

Support services for the Tribunal are provided by the OLRB: Office of the Director-Registrar, Solicitors Office, the Manager of Administration, Mediatorsand case processing staff of the OLRB. Tribunal staff is comprised entirely of Order-in-Council (OIC) appointments including the Presiding Officer and two part-time Deputy Presiding Officers (all cross-appointed to the OLRB), and five part time Members. Full time OICs are paid an annual salary with the cost shared with the OLRB . from which they are cross-appointed. The part-time members are paid by a per diem rate.

PEHT Organization Chart



Information Technology Plan

All information technology support, including maintenance of the Tribunal web site, is provided by the Board. The PEHT now has the use of a new case management system recently implemented by the OLRB in late July 2014 which includes enhanced reporting capabilities to allow for better tracking and response to processing data. Training for staff continues on the new system and changes will be developed in 2015-2018 to further enhance the operational capability. Work has begun on an e-filing project to be integrated with the new case management system which will impact on the PEHT. Modernization of the Tribunal's website will also be undertaken.

Communications Plan

The Tribunal will continue to communicate with its community of users through the use of its website, our decisions as posted on CANLII database; and through regular participation in conferences and committees.

Appendix A – Financial: PEHT Multi-Year from 2015 - 2018

Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	2.0	275.1	39.7	15.0	135.8	1.0	151.8	466.6		466.6
							-			
Program Sub-total	2.0	275.1	39.7	15.0	135.8	1.0	151.8	466.6	0.0	466.6
Lease					31.7		31.7	31.7		31.7
Grand Total	**2.0**	**275.1**	**39.7**	**15.0**	**167.5**	**1.0**	**183.5**	**498.3**	**0.0**	**498.3**

FY 2016-17 ($000)

Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	2.0	275.1	39.7	15.0	135.8	1.0	151.8	466.6		466.6
							-			
Program Sub-total	2.0	275.1	39.7	15.0	135.8	1.0	151.8	466.6	0.0	466.6
Lease					31.7		31.7	31.7		31.7
Grand Total	**2.0**	**275.1**	**39.7**	**15.0**	**167.5**	**1.0**	**183.5**	**498.3**	**0.0**	**498.3**

FY 2017-18 ($000)

Program/Region	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Sub-Total	Recoveries	TOTAL
Pay Equity Hearings Tribunal	1.0	275.1	39.7	15.0	136.8	1.0	151.8	466.6		466.6
							-			
Program Sub-total	1.0	275.1	39.7	15.0	136.8	1.0	151.8	466.6	0.0	466.6
Lease					31.7		31.7	31.7		31.7
Grand Total	**1.0**	**275.1**	**39.7**	**15.0**	**167.5**	**1.0**	**183.5**	**498.3**	**0.0**	**498.3**

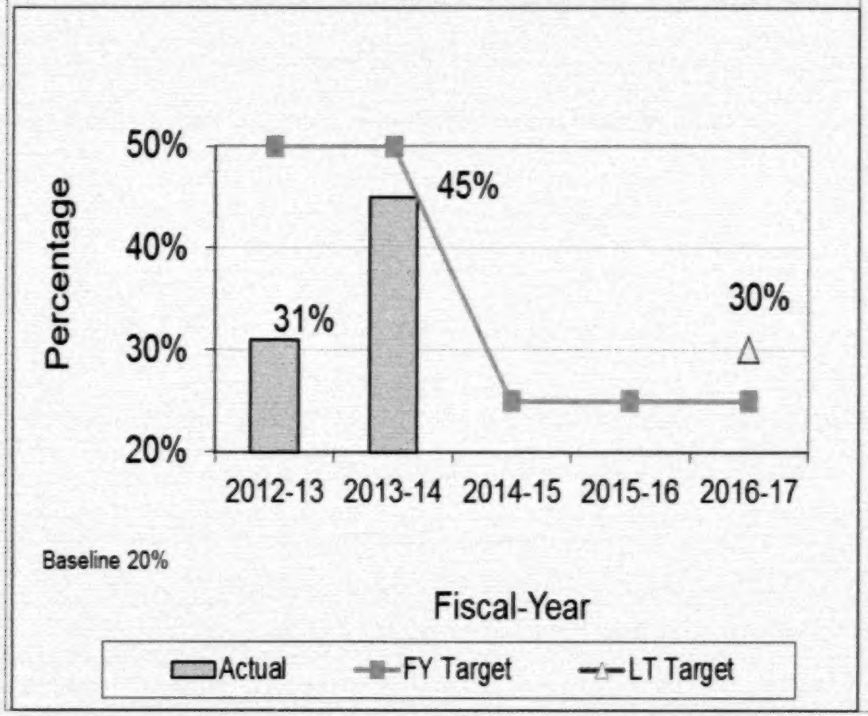
2015-18 Agency Business Plan
Baseline by Compensation Group
Multi-year FTE Cap

Agency: Pay Equity Hearings Tribunal

	2015-16						2016-17						2017-18					
Compensation Group	**Regular**		**Fixed Term**		**Total**		**Regular**		**Fixed Term**		**Total**		**Regular**		**Fixed Term**		**Total**	
	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies
SMG / ITX					0.00	0.00					0.00	0.00					0.00	0.00
MCP					0.00	0.00					0.00	0.00					0.00	0.00
Excluded					0.00	0.00					0.00	0.00					0.00	0.00
OPSEU					0.00	0.00					0.00	0.00					0.00	0.00
AMAPCEO					0.00	0.00					0.00	0.00					0.00	0.00
PEGO					0.00	0.00					0.00	0.00					0.00	0.00
ALOC					0.00	0.00					0.00	0.00					0.00	0.00
OCAA					0.00	0.00					0.00	0.00					0.00	0.00
PSAT					0.00	0.00					0.00	0.00					0.00	0.00
AOPDPS					0.00	0.00					0.00	0.00					0.00	0.00
OPPA					0.00	0.00					0.00	0.00					0.00	0.00
Minister's Staff					0.00	0.00					0.00	0.00					0.00	0.00
OIC	2.00				2.00	0.00	2.00				2.00	0.00	2.00				2.00	0.00
To be Determined					0.00	0.00					0.00	0.00					0.00	0.00
Students					0.00	0.00					0.00	0.00					0.00	0.00
Total	**2.00**	**0.00**	**0.00**	**0.00**	**2.00**	**0.00**	**2.00**	**0.00**	**0.00**	**0.00**	**2.00**	**0.00**	**2.00**	**0.00**	**0.00**	**0.00**	**2.00**	**0.00**
		TOTAL with Funded Vacancies				**2.00**		**TOTAL with Funded Vacancies**				**2.00**		**TOTAL with Funded Vacancies**				**2.00**

Appendix C – Performance Measures (Public): PEHT 2015 - 2018

Percent of cases disposed of during the year.



2015 Commitments

- ▶ 25% of cases disposed of during the year.

Long-term Target

- ▶ 35% of cases disposed of during the year.

What does the graph show?

- ▶ The Tribunal's case load each year is made up of two parts: the cases carried over into the year from the previous year and the cases filed during the current year. The graph measures how much of the Tribunal's total case load is disposed of during the year.

Note: the lower settlement rate and time to conclude cases recognizes the complex nature of pay equity disputes which results in few negotiated settlements. As a result, almost all cases are decided only after lengthy hearings. In general, the same counsel represent the parties in pay equity cases and the scheduling of hearings is further extended by the availability of counsel as well as presiding officers who are cross-appointed to other Tribunals.